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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.,

KRISTOPHER D. BAGWELL,

APPELLANT

APPELLATE CASE NO. 2024-001279

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing the jury to hear prior bad acts evidence at trial via a jail call presented as part of state's case-in-chief.

STATEMENT OF THE CASE

Appellant Kristopher David Bagwell was convicted of possession of methamphetamine during the July 2024 term of the Greenville County General Sessions Court before Judge Alex Kinlaw, who sentenced him to imprisonment for a period of five years. Attorneys Zachary Demaio and Rachel Kepley represented appellant at trial, and Assistant Solicitors Grace Mohoney and Sydney Case prosecuted the case.

Appellant appealed his conviction and sentence. This brief follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866. In order to admit evidence of bad acts not resulting in convictions, the trial court must "[a] a threshold matter, ...determine whether the proffered evidence is relevant." Clasby, 385 S.C. at 154, 682 S.E.2d at 895. "if the trial judge finds the evidence[is admissible under the terms] of Rule 404(b)" to show, inter alia, the existence of common scheme or plan. Clasby, 385S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403, [on whether] the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gilliam, 373 S.C.601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE ("[Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...").

ARGUMENT

The trial judge erred in allowing the jury to hear prior bad acts evidence at trial via a jail call presented as part of state's case-in-chief.

Police Officer Jared Greer testified that on July 1, 2021, he arrived at a particular residence in search of an individual who had pending arrest warrants filed against him. Officer Greer stated that while parked, he observed a person sitting outside in a vehicle who ultimately exited and began running away. Officer Greer stated that he gave chase thereafter and then apprehended the individual (subsequently identified as appellant). Drugs were found on appellant at that time. R. 91, l. 5 – p. 103, l. 17.

Prior to trial, defense counsel objected to the presentation of a jail call (state's exhibit #3) to the jury as evidence, in part because the call contained prior bad acts content that included appellant's claim that he "had some dope in [his] hand that [he] threw." R. 33, l.22-p. 34, l.8.

The recording of the jail call was ultimately entered into evidence and played for the jury. R. 137, l.9-10. Per the call, it was revealed to the jury that appellant had placed something in the yard. The inference was that the item thrown in the yard could quite possibly have been a substance that could have been classified as a drug. The prejudice was obvious because appellant was on trial at that time on a drug charge.

Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis. State v. Stearns, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013). Moreover, evidence of prior bad acts is inadmissible to suggest that the accused has the propensity to commit the crime charged. State v. Peake, 302 SC 378, 396 S.E. 2d 362 (1990). State v. Smith 309 SC 409, 419 S.E. 2d 816 (1992). Prior bad acts evidence is not admissible to show that the accused is a bad person. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Also, even if prior crimes are

considered to fall under the Lyle¹ exceptions, nonetheless, the value of the priors must outweigh the prejudicial value, i.e., the prior crimes cannot be used to show that the accused has a particular disposition to commit the offense for which he being tried. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008).

Additionally, there is heightened prejudice in admitting prior crimes that are similar to the one for which the accused is on trial. State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000); State v. Elmore, 368 S.C. 230, 628 S.E.2d 271 (2007); State v. Gore, 283 S.C. 118, 322 S.E.2d 13 (1984); State v. Wilson, 274 S.C. 635, 266 S.E.2d 426 (1980). Admitting priors similar to the crime for which the defendant is on trial would constitute evidence that is more prejudicial than probative because this suggests that the defendant had the propensity to commit the crime charged against him. State v. Smith, 309 S.C. 409, 419 S.E.2d 816 (1992).

Compare the Court's reversal in State v. Tuffour, 364 S.C. 497, 613 S.E.2d 814 (2005), where the court found error where the prior bad act of the defendant's sale of crack cocaine to an undercover operative on several prior occasions in the past was not relevant to the charge of trafficking for which the defendant was on trial. See also the reversal in State v. Campbell, 317 S.C. 449, 454 S.E.2d 899 (Ct. App. 1994), where the court held that the state's introduction of evidence of the defendant's prior cocaine sales was an attempt to demonstrate that because he had done so in the past, then he was guilty on the charge of distribution of crack cocaine for which he was being tried. In State v. Carter, 323 S.C. 465, 476 S.E.2d 916 (1996), the Court reversed and held that testimony concerning a prior sale of crack cocaine to a certain person by the defendant on January 14, 1994, was not necessary to establish the defendant's guilt regarding the January 18, 1994 sale of crack cocaine that was made to the same person. In State v. Bostick, 307 S.C. 226, 414 S.E.2d 175

¹ Prior crimes can only be used in order to show motive, intent, identity, absence of mistake or accident or common scheme or plan. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

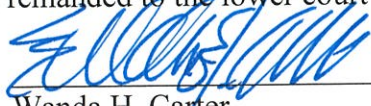
(1992), the court reversed and held that since the defendant was being tried for distribution of crack cocaine, evidence that the defendant made prior drug sales from the same location was held to have been more prejudicial than probative. In State v. Garner, 304 S.C. 220, 403 S.E.2d 63 (1991), the Court held that the defendant, who was convicted of trafficking in cocaine, was prejudiced by the admissions of portions of a taped conversation between him and another regarding negotiations for a future sale of a kilo of cocaine.

Clearly, the prior bad acts evidence revealed in the case at bar portrayed appellant as one who appeared to be connected to drugs, and the inference was that he was likely guilty of the drug charge for which he was on trial. Undoubtedly, the prejudicial value of the prior bad acts testimony revealed to the jury in this case outweighed any probative value.

The trial judge erred in allowing the jury to hear the jail call at issue in this case because it contained prejudicial prior bad acts evidence in violation of appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article, 1, §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, the undersigned counsel would request that appellant's conviction and sentenced be reversed and his case remanded to the lower court for a new trial.



Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

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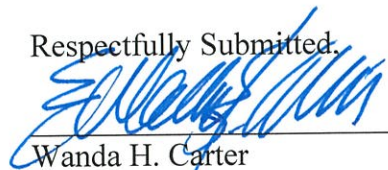
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Kristopher D. Bagwell states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Alex Kinlaw, which was held on July 24 & 25, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Kristopher D. Bagwell.

Respectfully Submitted,



Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript dated July 24-25, 2024
- (2) Indictment
- (3) State's Exhibit #3 (DVD Jail Call)

I certify that this designation contains no matter which is irrelevant to this appeal.



Wanda H. Carter
Interim Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

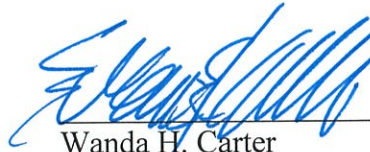
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Wanda H. Carter
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Kristopher D. Bagwell, #369517, at Manning Correctional Institution, 502 Beckman Drive, Columbia, SC 29203, this 7th day of July, 2025.



Wanda H. Carter
Interim Chief Appellate Defender

ATTORNEY FOR APPELLANT